

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B01

PLR-116596-14

Date:

September 29, 2014

### Legend

Taxpayer =

Trust =

Partnership =

State A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

a =

b =

c =

Dear \_\_\_\_\_ :

This responds to a letter dated April 7, 2014, and subsequent correspondence, submitted on behalf of Taxpayer and Trust. Taxpayer and Trust request an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to elect to treat Taxpayer as a taxable REIT subsidiary ("TRS") of Trust under § 856(l) of the Internal Revenue Code ("Code"), effective as of Date 4.

### **FACTS**

Trust is a State A limited liability company formed on Date 2 that has elected to be treated for federal income tax purposes as a real estate investment trust ("REIT") under § 856 of the Code. Trust's primary business is the acquisition, ownership, and leasing of a major franchise hotel ("Hotel"). Trust is the a percent owner and the manager of Partnership.

Partnership is a State A limited liability company formed on Date 3 that is taxed as a partnership for federal income tax purposes. Partnership is the c percent owner of Taxpayer.

Taxpayer is a State A limited liability company formed on Date 1 that has elected to be classified as an association taxable as a corporation for federal income tax purposes. Partnership appointed an individual as Manager of Taxpayer. Manager is an individual who is not related to Trust, but who is related to the b percent owner of Partnership.

On Date 4, Partnership acquired Hotel. Taxpayer represents that Hotel is a "qualified lodging facility" within the meaning of §§ 856(d)(8) and 856(d)(9). On the same date, Partnership and Taxpayer entered into a lease agreement pursuant to which Partnership earns rental income from Taxpayer for Taxpayer's use of the Hotel property. Taxpayer contracts with a third party to manage the operations of Hotel. Taxpayer represents that the third party manager is an "eligible independent contractor" within the meaning of § 856(d)(9).

On Date 3, Partnership, as the sole member of Taxpayer, and Taxpayer, entered into Limited Liability Company Agreement of Taxpayer ("Operating Agreement") for the following purposes: (1) to memorialize the formation of Taxpayer on Date 1 as a State A limited liability company, (2) to set forth their agreement as to the management of the business and affairs of Taxpayer, and (3) to memorialize certain other agreements between them with respect to Taxpayer.

Taxpayer, Trust, and Partnership, rely heavily upon Operating Agreement to ensure full compliance with certain regulatory matters. Operating Agreement reflects

that Taxpayer, Trust, and Partnership intended for Manager to cause Taxpayer to elect to be classified as an association taxable as a corporation and intended for Manager to further cause Taxpayer to join in an election with Trust to treat Taxpayer as a TRS.

More specifically, section 14 of Operating Agreement provides that Manager (1) shall cause Taxpayer to elect to be treated as an association taxable as a corporation for federal income tax purposes by filing IRS Form 8832 with an effective date on or before Date 3, and shall elect the same treatment to the extent possible for all state and local tax purposes, (2) shall further cause Taxpayer to join in an election with Trust to treat Taxpayer as a TRS under § 856(l), and (3) shall take all steps necessary to cause the foregoing elections to remain in effect until the dissolution of Taxpayer.

As a result, Taxpayer and Trust lacked specific knowledge of the status and completion of regulatory requirements associated with Partnership, because regulatory compliance was the function of Manager pursuant to Operating Agreement.

Taxpayer represents (1) that it failed to timely file Form 8832, Entity Classification Election, to elect to be classified as an association taxable as a corporation for federal income tax purposes, (2) that it filed Form 8832 on Date 6 requesting late classification relief under Rev. Proc. 2009-41, 2009-2 C.B. 439, and (3) that it met all the requirements stipulated in Rev. Proc. 2009-41 to be granted late relief. Subsequently, Taxpayer received a letter from the Service dated Date 7 approving its Form 8832 electing to be classified as an association taxable as a corporation effective Date 1. A copy of the letter granting Taxpayer relief was submitted on behalf of Taxpayer and Trust in connection with their letter ruling request.

Taxpayer and Trust represent that it had always been the intention of Taxpayer and Trust to operate in a manner consistent with Trust maintaining REIT status and also to jointly make an election to treat Taxpayer as a TRS of Trust. Moreover, Taxpayer and Trust represent that they intended to make a timely election to treat Taxpayer as a TRS of Trust on or before Date 5. However, due to a mix-up in communication between Taxpayer and its outside tax advisor, Taxpayer and Trust inadvertently failed to make the necessary election on a timely basis. Upon discovering the error during an internal review of the transaction, Taxpayer and Trust submitted a letter requesting an extension of time to jointly file an election to treat Taxpayer as TRS of Trust under § 856(l), effective as of Date 4.

Taxpayer and Trust make the following additional representations:

1. The request for relief was filed by Taxpayer and Trust before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief requested will not result in Taxpayer or Trust having a lower tax liability in the aggregate for all

years to which the regulatory election applies than they would have had if the election had been timely made (taking into account the time value of money).

3. Taxpayer and Trust did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code at the time they requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer and Trust did not choose to not file the election.
5. Neither Taxpayer nor Trust has used hindsight in making its decision to seek the relief requested.
6. Granting the requested relief will not affect any tax years which are closed under the statute of limitations.

In addition, affidavits on behalf of Taxpayer and Trust were provided as required by § 301.9100-3(e) of the Procedure and Administration Regulations.

### **LAW AND ANALYSIS**

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, § 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, § 856(l) specifically provides that the election, and any revocation thereof, may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Service announced the availability of new Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. However, the effective date of the election depends upon when the Form 8875 is filed. The instructions further provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith. Section 301.9100-3(c) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(i) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

### **CONCLUSION**

Based on the information submitted and representations made, we conclude that Taxpayer and Trust have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Taxpayer as a TRS of Trust, effective as of Date 4. Taxpayer and Trust have 90 days from the date of this letter to make the intended election.

This ruling is limited to the timeliness of the filing of Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Trust qualifies as a REIT, or whether Taxpayer otherwise qualifies as a TRS under part II of subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Taxpayer and Trust is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account

the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Andrea M. Hoffenson  
Chief, Branch 2  
Associate Chief Counsel  
(Financial Institutions & Products)

Enclosures:

Copy of this letter  
Copy for section 6110 purposes

cc: